



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,471	12/19/2001	Raymond Moore	020375-004500US	1898

20350 7590 06/16/2005

TOWNSEND AND TOWNSEND AND CREW, LLP  
TWO EMBARCADERO CENTER  
EIGHTH FLOOR  
SAN FRANCISCO, CA 94111-3834

EXAMINER

ABEL JALIL, NEVEEN

ART UNIT PAPER NUMBER

2165

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/028,471

Applicant(s)

MOORE, RAYMOND

Examiner

Neveen Abel-Jalil

Art Unit

2165

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

  
**SAM RIMELL  
PRIMARY EXAMINER**

First and far most, the Examiner thanks the applicant's representative for the thorough review of the action and since the representative had the opportunity to respond in light of the errors, the final is maintained accepting the representatives treatment of the errors.

Applicant's arguments submitted on May 23, 2005 have been acknowledged but are deemed to be persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the definition in the applicant's disclosure of "business representatives" describing a "business [that] comprises a plurality of representatives situated at a different geographical locations, with a business's products being supplied by each of the representatives) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner while considering the applicant's specification, has used the broadest reasonable interpretation for the claims to read on Gailey page 4, paragraphs 0043-0044 wherein "a business representative" indeed reads on "remote terminal operating as a subscriber terminal" whose is clearly part of the business operation taking place or itself is the business representative.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the application further clarifies that a competitor has "a similar business structure [to that of the business], each such competitor comprising a plurality of representatives distributed geographically) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regardless of the designation by the applicant of one entity as being the business and another to be the competitor, the art itself does not distinguish data stored in a database by such designations. Patentability is not given to the nature of data instead it is based on the method and process of applying the data. The business and the competitors can be both users of Gailey's system keeping track and calculating distances between each other's locations.

In response to applicant's argument that "Herz does not teach provide no description of any quantified level of competition between business and competitor representatives" is acknowledged but it is not deemed to be persuasive.

The Examiner asserts that Herz as a whole addresses optimization of targeted delivery based on user location; specifically in column 25, lines 26-45, Herz teaches anticipated closest proximity which reads on probability calculated based on location and demographics. Herz is teaching monitoring and tracking customer's shopping habits and calculating information related to competitor's business by proximity and type. It is clear that the information collected by Herz allows for location based calculation to be used when a user of the system is searching for related business information. The user of the system can be a business or its competitor. Herz's database measures and stores anticipated closest proximity information and any user profile information using statistical value calculations and metrics as disclosed in column 5, lines 15-34, and column 6, lines 1-30.

In response to applicant's argument that "Gailey's priority date does not anticipate the application because the priority reference to US Provisional application with regards to claim 1 limitation of "populating at least one database with the locations for the business representatives and the locations for the competitor representative" appears to lack adequate support" is acknowledged but is not deemed to be persuasive.

Most appropriate matches to the customer's profile also accompanied by recommendations that may include different businesses. The Cited reference clearly shows in the provisional application page 14, the traveling distance from desired location, advertising participation level of the business, and % match of the business to the consumers; making it possible to monitor, and compare different businesses relating to the customer's profile using their location and distances. The cited reference also offers to calculate the degree of match on page 14 of the provisional application. The user of the system could be a subscriber or a business keeping track of other similar business in and around a specific location thereby tracking trends and transaction related to businesses. The provisional application clearly gives an adequate example on page 15, the very last paragraph.